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6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON  
8 AT SEATTLE

9 CLIFTON KELLY BELL, )

10 Plaintiff, )

11 v. )

12 KING COUNTY, *et al.*, )

13 Defendants. )  
14

Case No. C07-1790-RSM-JPD

REPORT AND RECOMMENDATION

15 INTRODUCTION AND SUMMARY CONCLUSION

16 This is a civil rights action brought under 42 U.S.C. § 1983. Plaintiff alleges in his amended  
17 civil rights complaint that defendants E. Roberson and D. Norton, both Seattle Police Officers, acted  
18 improperly when they arrested plaintiff on September 23, 2007.<sup>1</sup> Defendants Roberson and Norton  
19 have now filed a motion to dismiss. Plaintiff has filed no response to defendants' motion. The  
20 Court, having reviewed the pending motion to dismiss, and the balance of the record, concludes that  
21 the motion to dismiss should be granted, that plaintiff's amended complaint should be dismissed as to  
22 defendants Roberson and Norton, and that this action should be dismissed with prejudice.

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24 <sup>1</sup> Plaintiff's amended complaint also asserted claims against King County District Court  
25 Judge Linda Thompson and King County. Those claims were previously dismissed by the Court.  
26 (*See* Dkt. Nos. 21 and 25.)

REPORT AND RECOMMENDATION

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1 DISCUSSION

2 An action may be dismissed for failure to state a claim only if it appears beyond doubt that  
3 the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.  
4 *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957); *Keniston v. Roberts*, 717 F.2d 1295 (9th Cir. 1983).  
5 On a motion to dismiss, material allegations of the complaint are taken as admitted and the complaint  
6 is to be liberally construed in favor of the plaintiff. *Keniston*, 717 F.2d at 1300. Vague and  
7 conclusory allegations of official participation in civil rights violations are not sufficient to withstand  
8 a motion to dismiss.” *Pena v. Gardner*, 976 F.2d 469, 471 (9th Cir. 1992) (quoting *Ivey v. Board of*  
9 *Regents of Univ. of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982)). “Dismissal can be based on the lack  
10 of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable theory.”  
11 *Balistreri v. Pacifica Police Dep’t.*, 901 F.2d 696, 699 (9<sup>th</sup> Cir. 1988).

12 Plaintiff alleges in his amended complaint that he was arrested by defendants Roberson and  
13 Norton on September 23, 2007, and that defendants made him put on his girlfriend’s “Betty Boop  
14 pants” prior to transporting him to jail. (Dkt. No. 9 at 3.) Plaintiff asserts that he was made to put on  
15 his girlfriend’s clothes under threat of force and that he was humiliated when he was taken to jail in  
16 women’s clothing.<sup>2</sup> (*Id.*) Finally, plaintiff asserts that after defendants handcuffed him, they sexually  
17 assaulted him by giving him “a slap on the butt,” and they sexually harassed him by laughing and  
18 telling him “now you’re ready to go to jail legs.” (*Id.*)

19 Plaintiff does not specifically allege in his complaint that the misconduct of defendants  
20 Roberson and Norton violated his federal constitutional rights. However, liberally construed,

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23 <sup>2</sup> Attached to plaintiff’s form complaint are four pages, each of which is identified as a “civil  
24 rights complaint,” and each of which contains a re-statement of the claims asserted by plaintiff in his  
25 amended complaint. (*See* Dkt. No. 9 at 5-8.) It appears that these pages were intended as copies of  
26 the amended complaint rather than as attachments to the complaint. None of these copies makes any  
allegation of any threat of force by defendants Roberson and Norton.

1 plaintiff's amended complaint asserts a Fourth Amendment claim for unreasonable seizure.

2       The Fourth Amendment guarantees that individuals will not be subjected to unreasonable  
3 searches and seizures. The Fourth Amendment's reasonableness standard prohibits not only the use  
4 of excessive force in effectuating a seizure, it also generally prohibits "unreasonable intrusions on  
5 one's bodily integrity and other harassing and abusive behavior that rises to the level of unreasonable  
6 seizure." *Fontana v. Haskin*, 262 F.3d 871, 878-879 (9<sup>th</sup> Cir. 2001) (internal citation and quotations  
7 omitted). However, while allegations of sexual bodily intrusion may be actionable as a violation of  
8 the Fourth Amendment, *de minimis* bodily intrusions are constitutionally reasonable. *Fontana*, 262  
9 F.3d at 880.

10       Plaintiff asserts that force was threatened, but he does not contend that any force was actually  
11 used against him. Plaintiff offers no facts to suggest that the threatened use of force implicates  
12 Fourth Amendment concerns. Defendants' alleged directive to plaintiff to put on his girlfriend's  
13 clothing likewise does not implicate Fourth Amendment concerns. The record reflects that plaintiff  
14 had no clothing on at the time defendant's encountered him. While no doubt embarrassing to  
15 plaintiff, and perhaps unnecessary on the part of defendants, requiring plaintiff to put on "Betty Boop  
16 pants" as opposed to some other type of clothing simply lacks any constitutional significance.

17       As to the alleged sexual misconduct by defendants, slapping plaintiff once on the butt  
18 constitutes a *de minimis* bodily intrusion and therefore must be deemed constitutionally reasonable.  
19 Defendants' alleged comment to plaintiff that "now you're ready to go to jail legs" also does not  
20 implicate constitutional concerns. The Ninth Circuit has recognized that "[v]erbal harassment or  
21 abuse ... is not sufficient to state a constitutional deprivation under 42 U.S.C. § 1983." *Oltarzewski v.*  
22 *Ruggiero*, 830 F.2d 136, 189 (9<sup>th</sup> Cir. 1987) (citing *Collins v. Cundy*, 603 F.2d 825, 827 (10<sup>th</sup> Cir.  
23 1979).

1 CONCLUSION

2 For the foregoing reasons, this Court recommends that defendants' motion to dismiss be  
3 granted, that plaintiff's amended complaint be dismissed as to defendants Roberson and Norton, and  
4 that this action be dismissed with prejudice. A proposed order accompanies this Report and  
5 Recommendation.

6 DATED this 12th day of September, 2008.

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9 JAMES P. DONOHUE  
United States Magistrate Judge